

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SONOCO PROTECTIVE SOLUTIONS,
Employer,

And

LABORERS LOCAL 132,
Petitioner.

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Case No.: 04-RC-128714

**PETITIONER'S ANSWERING BRIEF IN
RESPONSE TO EMPLOYER'S REQUEST FOR
REVIEW/EXCEPTIONS TO THE REPORT ON OBJECTIONS**

I. INTRODUCTION

Petitioner, Laborers Local 132 (hereinafter "Petitioner") submits that the Regional Director's Report and Recommendations to the Election finding no merit to the Employer's objections to the election was properly decided. The Employer failed to submit the evidence necessary to establish prima facie grounds that the conduct alleged destroyed laboratory conditions so as to interfere with a fair election. Accordingly, the Employer's objections should be overruled.

II. FACTS

The Union filed a petition in Case No. 04-RC-12874 seeking to represent all production and maintenance employees at Sonoco's Montgomeryville, Pennsylvania, facility. The Regional Director approved the parties' Stipulated Election Agreement on May 28, 2014, and the election was held on June 26, 2014. A majority of employees voted in favor of the Petitioner and the Employer filed objections. On July 3, 2014, the Regional Director issued a Report and Recommendation on Objections to the Election finding that the objections lack merit and

recommended that the Board overrule the objections and certify the election results. The Employer filed a Request for Review. Petitioner submits this brief in response and in support of the Regional Director's Report and Recommendations on the Objections.

III. ARGUMENT

It is well-settled that evidence supporting objections must include a list of witnesses and a brief description of their testimony. If the objecting part is unable to submit sufficient evidence to establish a *prima facie* case in support of the objections, or if the objections even if true are insufficient to set aside the election, the regional director is not required to pursue the investigation and the objections may be overruled. *See*, NLRB Casehandling Manual Para. 11392.5; *Cumberland Nursing & Convalescent Center*, 248 NLRB 322 (1980); *Newport News Shipbuilding and Dry Dock Co.*, 239 NLRB 82 (1978). To be entitled to a hearing the objector must supply the Board with specific evidence which, *prima facie*, would warrant setting aside the election. As to how specific the evidence must be, the Court in *United States Rubber Company v. N.L.R.B.*, 373 F.2d 602 (5th Cir. 1967), said the objections must not be "nebulous and declamatory assertions, wholly unspecified, nor equivocal hearsay." *Id.* at 606.

It is also well settled that "[r]epresentation elections are not lightly set aside." *NLRB v. Hood Furniture Mfg. Co.*, 470 F.2d 325, 328 (5th Cir. 1991) (citing *NLRB v. Monroe Auto Equipment Co.*, 470 F.2d 1329, 1333 (5th Cir. 1972), cert. denied, 412 U.S. 928 (1973)). "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *NLRB v. Hood Furniture Mfg. Co.*, *supra*, 941 F.2d at 328. Accordingly, "the burden of proof on parties seeking to have a Board-supervised election set

aside is a 'heavy one.'" *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989) (quoting *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir.), cert. denied, 416 U.S. 986 (1974)).

In this case, the Employer's election objections should be overruled, because the evidence is insufficient to show that the Petitioner engaged in objectionable conduct. In this regard, the Employer filed four objections. In Objections 1 and 2, the Employer claimed that the immediately prior to the election, employees acting in support of the Petitioner threatened Asian employees. The Employer based this claim upon the allegations that a single employee was reluctant to accept a "Vote No" t-shirt and that a supporter of the Union allegedly told another employee that if the Union won the election, supporters of the Employer would be fired. In support of this objection, the Employer submitted a statement by a Plant Administrator that redacted the employees' names, leaving only hearsay to support its objection. Clearly, the submission of hearsay cannot be used to support a prima facie case. As such, the Regional Director properly found that the objections lacked merit. Relying on the same alleged statements, the Employer claimed in Objection 3 that the alleged statements described in Objection 1 "were delivered in a manner calculated to physically intimidate the Employer's Asian employees who were known to have a limited understanding of the English language." Again, no evidence beyond the hearsay statement of the Plant Administrator was presented in support of this objection. As the Regional Director found both the Casehandling Manual Section 11392.6 and the Board's decision in *Holladay Corp.*, 266 NLRB 621(1983) requires an objecting party to provide the names and contact information for witnesses to the objectionable behavior. The Employer failed to do so and therefore the objections were properly dismissed.

The Employer's fourth objection asserted that the while the polls were opened, the Employer's production planner observed a supporter of the Petitioner engaged in electioneering

near the polling area by calling a coworker by name, holding up two fingers and then made a hand motion in the shape of a checkmark. According the Production Planner's Declaration, the next day an employee approached him visibly upset and said, "Someone was trying to tell me to vote 'yes'." There is no claim that the employee who held up two fingers and made the sign of a checkmark was acting as an agent of the Petitioner. Likewise, there was no claim that there was anything wrong with a coworker urging another to vote in favor of the Petitioner. Putting aside the issue of hearsay, there is no evidence that this gesture and a single alleged statement urging a co-worker to vote yes so substantially interfered with the employees' exercise of free choice as to require the election be set aside. *See, Rheem Manufacturing Company*, 308 NLRB 459, 463 (1992). As such, the Regional Director properly overruled Objection 4.

IV. CONCLUSION

For the foregoing reasons, Petitioner Laborers Local 132 respectfully requests that the Board overrule the Employer's objections and certify the results of the election.

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Dated: August 12, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2014, I served in the manner listed below on this date the Petitioner's Answering Brief in Response to the Employer's Exceptions to the Report on Objections, in reference to the above matter:

Via electronic mail:

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